

Ed Seliger

By: Mike Jackson

S.B. No. 1681

A BILL TO BE ENTITLED

AN ACT

relating to the removal and collection of convenience switches from motor vehicles; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 375 to read as follows:

CHAPTER 375. REMOVAL OF CONVENIENCE SWITCHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.001. DEFINITIONS. In this chapter:

(1) "Capture rate" means the annual number of convenience switches removed, collected, and recovered, expressed as a percentage of the number of convenience switches available for removal in that year from end-of-life vehicles.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Convenience switch" means a capsule, commonly known as a bullet, that is part of a motor vehicle convenience light switch assembly which, because of its contents, is the type of switch subject to U.S. Environmental Protection Agency work practice standards, such as those promulgated in Title 40, Code of Federal Regulations, Section 63.7700(c)(2) or subsequent rulemaking.

1 (4) "Convenience switch recovery plan" means a plan for
2 removing, collecting, and recovering convenience switches from end-
3 of-life vehicles in accordance with Subchapter B.

4 (5) "End-of-life vehicle" means a vehicle that:

5 (A) has not been intentionally flattened, crushed,
6 shredded, or baled; and

7 (B) is sold, given, or otherwise conveyed to a
8 vehicle recycler or scrap metal recycling facility for the purpose
9 of recycling.

10 (6) "Executive director" means the executive director of
11 the commission.

12 (7) "Manufacturer" means:

13 (A) a person who is the last entity in the
14 production or assembly process of a new vehicle; or

15 (B) the importer or domestic distributor of the
16 vehicle, in the case of an imported vehicle.

17 (8) "Scrap metal recycling facility" means a facility at
18 a fixed location that uses equipment to process and refabricate
19 scrap metal into prepared grades and principally produces scrap
20 iron, scrap steel, or nonferrous metallic scrap for sale.

21 (9) "Vehicle" means any automobile, station wagon,
22 truck, van, or sport utility with a gross vehicle weight rating of
23 less than 12,000 pounds.

24 (10) "Vehicle recycler" means a person engaged in the
25 business of acquiring, dismantling, or preparing for recycling six
26 or more end-of-life vehicles in a calendar year for the primary
27 purpose of reselling the vehicles' parts. The term includes a

1 salvage vehicle dealer licensed under Chapter 2302, Occupations
2 Code.

3 Sec. 375.002. APPLICABILITY OF CHAPTER. This chapter applies
4 only to:

- 5 (1) a manufacturer of vehicles sold in this state; and
- 6 (2) a vehicle recycler or scrap metal recycling facility
7 in this state.

8 [Sections 375.003-375.050 reserved for expansion]

9 SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PLAN

10 Sec. 375.051. DEVELOPMENT OF PLAN. (a) Each manufacturer of
11 vehicles sold in this state, individually or as part of a group,
12 and in consultation with the commission, shall develop a
13 convenience switch recovery plan in accordance with this subchapter
14 and shall submit the plan to the executive director for review and
15 approval.

16 (b) The executive director shall notify each manufacturer of
17 the requirement to develop a convenience switch recovery plan and
18 submit the plan to the executive director for approval.

19 Sec. 375.052. CONVENIENCE SWITCH RECOVERY PLAN CONTENTS.

20 (a) The convenience switch recovery plan shall include:

- 21 (1) for each make, model, and model year of a vehicle:
 - 22 (A) information identifying the make, model, and
23 year;
 - 24 (B) a description of each convenience switch used;
 - 25 (C) a system to mark a vehicle to indicate the
26 presence or absence of a convenience switch;

1 (D) the location on the vehicle of each convenience
2 switch;

3 (E) safe and environmentally sound methods for
4 removing a convenience switch from an end-of-life vehicle; and

5 (F) the number of convenience switches available in
6 the vehicle, for purposes of computing the capture rate.

7 (2) educational materials to assist a vehicle recycler
8 or scrap metal recycling facility in following a safe and
9 environmentally sound method to remove convenience switches from
10 end-of-life vehicles, including educational materials on hazards
11 presented by the content of a convenience switch and the proper
12 handling of that content;

13 (3) methods for recycling or disposing of the
14 manufacturer's convenience switches, including the method of
15 packaging and shipping a convenience switch to an authorized
16 recycling, storage, or disposal facility;

17 (4) methods for the storage of a convenience switch
18 collected and recovered from an end-of-life vehicle if
19 environmentally appropriate recycling or disposal technologies are
20 not available; and

21 (5) a plan for implementing and financing the removal,
22 collection, and recovery program.

23 (b) To the extent possible, a convenience switch recovery
24 plan must use existing end-of-life vehicle infrastructure. If that
25 infrastructure is not used, the plan must include reasons for
26 establishing a separate infrastructure.

1 Sec. 375.053. FINANCING OF COSTS. A convenience switch
2 recovery plan must provide for financing by the manufacturer of the
3 removal, collection, and recovery of convenience switches from a
4 vehicle of the manufacturer in a way that ensures that a financial
5 burden is not imposed on the commission or on an automobile dealer
6 or business that recycles, handles, or otherwise processes end-of-
7 life vehicles.

8 Sec. 375.054. FEE. Each manufacturer's convenience switch
9 recovery plan must include a procedure that ensures the prompt
10 payment to a vehicle recycler, scrap metal recycling facility, or
11 the commission of a fee paid by the manufacturer to cover the costs
12 associated with convenience switch removal and disposal. The
13 payments must include:

14 (1) a minimum of \$5 for each convenience switch removed
15 by a vehicle recycler or scrap metal recycling facility in
16 accordance with Section 375.101 as compensation for the labor and
17 other costs incurred in the removal of the convenience switch; and

18 (2) \$1 for each convenience switch removed by a vehicle
19 recycler or scrap metal recycling facility in accordance with
20 Section 375.101 as compensation to the commission for costs
21 incurred in administering and enforcing the provisions of this
22 chapter.

23 Sec. 375.055. PACKAGING, SHIPPING, AND RECYCLING COSTS. The
24 manufacturer's plan must include financing to pay the costs of:

25 (1) packaging, shipping, and removal of convenience
26 switches to recycling, storage, or disposal facilities; and

1 (2) recycling, storing, or disposing of removed
2 convenience switches.

3 Sec. 375.056. COSTS OF EDUCATIONAL MATERIALS. The
4 manufacturer's plan must provide financing for the preparation of
5 educational materials required under Section 375.052 and the
6 distribution of those materials to each vehicle recycler and scrap
7 metal recycling facility.

8 Sec. 375.057. COSTS OF RECORDS MAINTENANCE. The
9 manufacturer's plan must provide financing for the costs of
10 maintaining all record-keeping systems associated with the
11 implementation of this chapter.

12 Sec. 375.058. FEE INCREASES AS NEEDED. The executive
13 director shall increase a fee under Section 375.054 to an
14 appropriate level on a determination by the executive director that
15 the amount being collected is not sufficient to ensure the proper
16 removal and management of convenience switches.

17 Sec. 375.059. STORAGE AND REIMBURSEMENT. (a) Each
18 manufacturer, individually or as part of a group, shall provide to
19 each vehicle recycler and scrap metal recycling facility containers
20 suitable for the safe storage of convenience switches until the
21 vehicle recycler or scrap metal recycling facility can be
22 reimbursed for the costs of removal, storage, packaging, and
23 shipping of the switches.

24 (b) A vehicle recycler or scrap metal recycling facility is
25 entitled to reimbursement by the manufacturer of a vehicle for each
26 convenience switch removed from the vehicle in the amount specified
27 by Section 375.054 or by the executive director under Section

1 375.058 regardless of the date on which a switch is removed from a
2 vehicle if the vehicle recycler or scrap metal recycling facility
3 maintains the records required by Section 375.101 or 375.102.

4 Sec. 375.060. INDEMNIFICATION OF VEHICLE RECYCLERS AND SCRAP
5 METAL RECYCLING FACILITIES. A manufacturer shall indemnify,
6 defend, and hold harmless a vehicle recycler or scrap metal
7 recycling facility from liability for any damages arising from the
8 release of the contents of a convenience switch after the switch is
9 transferred to the manufacturer or the manufacture's agent or
10 contractor.

11 Sec. 375.061. PLAN APPROVAL PROCESS. (a) Not later than the
12 60th day after the date on which a convenience switch recovery plan
13 is received by the commission, the executive director shall approve
14 or disapprove all or part of the plan or may approve the plan
15 conditionally. In considering the plan, the executive director may
16 seek comments or information from interested persons, including
17 representatives of vehicle recyclers and scrap metal recycling
18 facilities.

19 (b) If the executive director approves an entire convenience
20 switch recovery plan, the manufacturer shall begin implementing the
21 plan not later than the 30th day after the date on which the
22 manufacturer receives notice of the approval, unless the
23 manufacturer and the executive director have agreed to a different
24 date to initiate the plan.

25 (c) If the executive director disapproves an entire
26 convenience switch recovery plan, the executive director shall
27 provide the manufacturer with a list of the plan's deficiencies.

1 The manufacturer must submit a new convenience switch recovery plan
2 not later than the 30th day after the date on which the list of
3 deficiencies is received.

4 (d) If only part of a convenience switch recovery plan is
5 approved, the manufacturer shall implement the approved part as
6 instructed by the executive director and shall submit a revised
7 plan not later than the 30th day after the date on which the notice
8 of partial approval is received.

9 (e) The executive director shall review and approve, partly
10 approve, or disapprove a revised convenience switch recovery plan
11 not later than the 30th day after the date on which the revised plan
12 is received.

13 (f) If a plan has not been fully approved on or before the
14 180th day after the date on which notice to manufacturers was sent
15 under Section 375.051, the executive director may complete on
16 behalf of a manufacturer any part of a convenience switch recovery
17 plan that the executive director has not approved.

18 (g) The executive director may review an approved convenience
19 switch recovery plan and recommend modifications to the plan at any
20 time on a determination that the plan is deficient or is not
21 accomplishing the objectives set out in this chapter in any
22 material respect, including a determination that the fees under
23 Section 375.054 are not sufficient to ensure the removal of each
24 convenience switch.

25 [Sections 375.052-375.100 reserved for expansion]

26 SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PLAN IMPLEMENTATION

1 Sec. 375.101 REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES.

2 (a) In accordance with educational materials received under this
3 chapter, a vehicle recycler shall remove all convenience switches
4 from the vehicle as identified in the applicable convenience switch
5 recovery plan before the vehicle recycler:

6 (1) crushes, flattens, bales, or shreds an end-of-life
7 vehicle; or

8 (2) sells, gives, or otherwise conveys ownership of an
9 end-of-life vehicle to:

10 (A) a scrap metal recycling facility for recycling;

11 or

12 (B) any other person for purposes of crushing or
13 other similar processing.

14 (b) If damage to the vehicle makes a convenience switch
15 inaccessible for removal, the vehicle recycler shall note the
16 location of the damage and of the switch on the normal business
17 records of the vehicle recycler. Except as provided by Subsection
18 (c), a vehicle recycler may not deliver a vehicle that contains a
19 convenience switch to a scrap metal recycling facility.

20 (c) A scrap metal recycling facility may accept an end-of-
21 life vehicle that contains a convenience switch by agreeing to
22 remove the remaining convenience switch in accordance with the
23 applicable convenience switch recovery plan before the vehicle is
24 flattened, crushed, shredded, or baled.

25 Sec. 375.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING
26 FACILITY RECORDS. A vehicle recycler or scrap metal recycling

1 facility that removes convenience switches under Section 375.101
2 shall maintain records documenting:

3 (1) the number of convenience switches collected;

4 (2) the total number of end-of-life vehicles accepted
5 containing at least one convenience switch;

6 (3) the total number of end-of-life vehicles processed
7 for recycling;

8 (4) the number of end-of-life vehicles, by make and
9 model of each vehicle processed, from which a convenience switch
10 was removed;

11 (5) the number of end-of-life vehicles processed for
12 recycling, by make and model of each end-of-life vehicle;

13 (6) the total number of convenience switches collected
14 from each make of end-of-life vehicle; and

15 (7) the number of convenience switches that were
16 inaccessible because of damage to the end-of-life vehicle.

17 Sec. 375.103. INACCESSIBLE CONVENIENCE SWITCHES CONSIDERED IN
18 CAPTURE RATE. For purposes of computing the capture rate, a
19 convenience switch that is inaccessible because of damage to the
20 vehicle is considered to be a convenience switch that was available
21 for inspection or removal but was not inspected or removed.

22 Sec. 375.104. LIMIT ON DUTIES OF VEHICLE RECYCLER OR SCRAP
23 METAL RECYCLING FACILITY. (a) The commission shall not require a
24 vehicle recycler or scrap metal recycling facility to undertake any
25 action beyond the actions reasonably arising from obligations
26 created under this chapter.

1 (b) On request, the records required under Sections 375.101
2 and 375.102 must be made available to the commission for review.

3 Sec. 375.105. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a) A
4 person may not represent that a convenience switch has been removed
5 from an end-of-life vehicle being conveyed for recycling or other
6 processing if that person has not removed the convenience switch or
7 unless the person has good cause to believe that another person has
8 removed the convenience switch.

9 (b) A scrap metal recycling facility or other person that
10 acquires scrap metal, including scrap metal in the form of an
11 intentionally flattened, crushed, shredded, or baled vehicle, is
12 not considered to be in violation of this subchapter solely because
13 a convenience switch is found in the scrap metal after acquisition.

14 Sec. 375.106. HANDLING OF CONVENIENCE SWITCHES. After
15 removal from a vehicle, a convenience switch shall be collected,
16 stored, transported, and otherwise handled in accordance with:

17 (1) the applicable convenience switch recovery plan; and

18 (2) the applicable solid waste rules of the commission.

19 [Section 375.107-375.150 reserved for expansion]

20 SUBCHAPTER D. REPORTS

21 Sec. 375.151. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT.

22 (a) On or before December 31 of each year, each manufacturer shall
23 present a report individually or as part of a group to the
24 executive director on the manufacturer's convenience switch
25 recovery plan. The report must include:

26 (1) a detailed description and documentation of the
27 capture rate achieved in comparison to the target rate of at least

1 90 percent, consistent with the principle that a convenience switch
2 should be recovered unless damage to the vehicle makes the switch
3 inaccessible;

4 (2) a description of additional or alternative actions
5 that may be implemented to improve the convenience switch recovery
6 plan and the implementation of the plan, if the 90 percent capture
7 rate is not achieved;

8 (3) the number of convenience switches collected, the
9 number of end-of-life vehicles containing convenience switches, and
10 the number of end-of-life vehicles processed for recycling;

11 (4) a description of how the convenience switches
12 collected were managed; and

13 (5) a summary of the amounts paid to cover the costs of
14 implementing the convenience switch recovery plan.

15 (b) The executive director may discontinue the requirement
16 for an annual report under this section if the executive director
17 determines that the convenience switches in end-of-life vehicles
18 manufactured by a particular manufacturer no longer pose a
19 significant threat to the environment or to public health.

20 Sec. 375.152. ANNUAL MANUFACTURER'S DESIGN REPORT. (a) On or
21 before December 31 of each year, a manufacturer shall report
22 individually or as part of a group to the executive director
23 concerning steps being taken by the manufacturer to design vehicles
24 and vehicle components for recycling. The report must include:

25 (1) a list of all vehicle components included in the
26 manufacturer's vehicles for each of the last three model years, the
27 current model year, and the upcoming model year that contain

1 convenience switches or other components presenting similar
2 environmental risks;

3 (2) design changes that the manufacturer has implemented
4 or is planning to implement to reduce or eliminate convenience
5 switches or other components presenting similar environmental risks
6 from the manufacturer's vehicles and the amount of any reductions;

7 (3) policies the manufacturer has implemented to ensure
8 that the manufacturer's vehicles are designed to be recycled in a
9 safe, cost-effective, and environmentally sound manner using
10 existing technologies and infrastructure;

11 (4) a list of:

12 (A) complaints and reports received by the
13 manufacturer in the last 12 months from vehicle recyclers, scrap
14 metal recycling facilities, government entities, or organizations
15 representing any of those persons; and

16 (B) other facts and circumstances that have made
17 the manufacturer aware that the manufacturer's vehicles contain
18 vehicle components that present environmental risks; and

19 (5) the design or manufacturing changes that the
20 manufacturer has implemented or plans to implement to reduce or
21 remove each environmental risk listed under Subdivision (4) and the
22 year in which those changes will eliminate that environmental risk.

23 (b) The commission may:

24 (1) periodically evaluate the steps manufacturers are
25 taking to design for recycling; and

26 (2) report to the governor, the lieutenant governor, the
27 speaker of the house of representatives, and the chair of each

1 standing committee of the legislature with jurisdiction over
2 environmental issues the commission's findings under Subdivision
3 (1) together with any recommended legislative action that may be
4 appropriate to promote vehicle recycling in the interest of
5 preserving scarce resources and the safe and efficient reduction of
6 solid waste.

7 [Sections 375.153-375.200 reserved for expansion]

8 SUBCHAPTER E. RULES, PENALTIES, AND ENFORCEMENT

9 Sec. 375.201. RULES. (a) The commission shall adopt rules
10 to implement this chapter, including rules governing the removal of
11 a convenience switch under a convenience switch recovery plan.

12 (b) This chapter does not limit the commission's authority to
13 allow new or modified plans to be submitted and independently
14 financed to facilitate the removal from end-of-life vehicles of any
15 components that have contents that result in the emission of
16 hazardous air pollutants if the contents are melted, similar to the
17 emissions expected from the melting of a convenience switch.

18 (c) To the extent authorized by federal law, in the
19 development of emission trading programs, the commission shall
20 recognize as creditable any emission reductions accomplished
21 through implementation of this chapter, including any additional
22 emission reductions accomplished through plans submitted under
23 Subsection (b).

24 Sec. 375.202. PENALTIES AND ENFORCEMENT. A person who
25 violates a provision of this chapter, or a rule or order issued
26 under this chapter, is subject to the penalty and enforcement
27 provisions of Chapter 7, Water Code.

1 SECTION 2. (a) The Texas Commission on Environmental Quality
2 shall adopt rules to implement Chapter 375, Health and Safety Code,
3 as added by this Act, not later than March 1, 2006. The rules
4 adopted under this section shall include provisions for regulating
5 a convenient switch, as defined by Section 375.001, Health and
6 Safety Code, as added by this Act, as universal waste under Section
7 335.261, Title 30, Texas Administrative Code.

8 (b) Until rules have been adopted and promulgated under
9 Subsection (a) of this section, the commission shall regulate a
10 convenience switch, as defined by Section 375.001, Health and
11 Safety Code, as added by this Act, as a universal waste in
12 accordance with 40 C.F.R. Part 273, and as incorporated by
13 reference in Section 335.261, Title 30, Texas Administrative Code,
14 for purposes of establishing the accumulation time limits.

15 SECTION 3. (a) This section applies only to a manufacturer
16 of a vehicle sold in this state as those terms are defined by
17 Section 375.001.

18 (b) Not later than 30 days after the effective date of this
19 Act, the executive director of the Texas Commission on
20 Environmental Quality shall notify each manufacturer of vehicles
21 sold in this state of the requirement to submit a convenience
22 switch recovery plan in accordance with Subchapter B, Chapter 375,
23 Health and Safety Code, as added by this Act.

24 (c) Not later than 60 days after the effective date of this
25 Act, individually or as part of a group, a manufacturer shall
26 provide containers as required by Section 375.059, as added by this
27 Act, to each vehicle recycler and scrap metal recycling facility.

1 (d) Each manufacturer shall submit a convenience switch
2 recovery plan as required by Section 375.051, as added by this Act,
3 to the executive director of the Texas Commission on Environmental
4 Quality for review not later than 90 days after the effective date
5 of this Act.

6 (e) The initial reports described by Sections 375.151 and
7 375.152, Health and Safety Code, as added by this Act, shall be
8 presented as required by those sections on or before December 31,
9 2006.

10 SECTION 4. This Act takes effect immediately if it receives a
11 vote of two-thirds of all members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2005.

S.B. No. 1681

By Mike Jackson

A BILL TO BE ENTITLED

AN ACT:

Relating to the removal and collection of convenience switches from motor vehicles; providing penalties.

MAR 11 2005
MAR 30 2005

Filed with the Secretary of the Senate

Read and referred to Committee on SUBCOMMITTEE ON EMERGING TECHNOLOGIES & ECONOMIC DEVELOPMENT

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent
_____ yeas, _____ nays

Read second time, _____, and ordered engrossed by: { unanimous consent
a viva voce vote
_____ yeas, _____ nays

Senate and Constitutional 3 Day Rule suspended by a vote of _____ yeas, _____ nays.

Read third time, _____, and passed by: { A viva voce vote
_____ yeas, _____ nays

SECRETARY OF THE SENATE

OTHER ACTION:

Engrossed

Sent to House

Engrossing Clerk _____

Received from the Senate

Read first time and referred to Committee on _____

Reported _____ favorably (as amended) (as substituted)

Sent to Committee on (Calendars) (Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting.

Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

Returned to Senate.

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

CHIEF CLERK OF THE HOUSE

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays